IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5110 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
JANUARY 18, 2007.

Heard Shri Sambre, learned counsel for the petitioner, Shri Mehadia, learned counsel for respondent No.1 and learned AGP for respondents No. 2 & 3.

The matter was adjourned on previous occasions because the petitioner stated that he wanted to take advantage of policy decision of present Respondent No.1 according to which if petitioner waived back wages, he could be given reinstatement.

Shri Mehadia, learned counsel for respondent No.1 informs that as no application was received from the petitioner under said scheme before the prescribed date, he cannot be considered under said scheme.

Shri Sambre, learned counsel for the petitioner wanted time to verify this position. However, considering the fact that the matter

is pending since 2004, the request has been rejected.

Shri Sambre, learned counsel on merits argues that 12 students in dispute boarded the bus 5 kms. before checking the bus and the guide has collected the bus fare from the students and handed over the fare amount to the petitioner and the petitioner was in the process of issuing the tickets when bus was checked. He contends that in these circumstances, the enquiry officer has not considered the statement of students recorded in departmental enquiry and the said statement is also not considered by the Labour Court or Industrial Court. He, therefore, argues that finding of misconduct reached against the petitioner is perverse and cannot be sustained. He further argues that as the bus was over crowded, the tickets could not be issued immediately. He explained that the bus was a school bus.

I have heard Shri Mehadia, learned counsel who informs that even the passes of passengers travelling in the bus (46 in number) were not checked and entry of those passes was also not taken in the way bill. He

further invites attention to past service record of the petitioner. The perusal of past service record reveals that there are two earlier instances where the passengers were found without tickets and he was fined therefor. There are four instances in which his M.S.R.T.C. cash was found less and he was fined for said shortage. The misconduct clearly shows that the entry of 46 passengers travelling in the bus was not taken in way bill and their passes were not checked. The misconduct was in relation to 12 students. Even if it is presumed that total number of passengers in bus was 65 but only seven passengers were remaining in balance and hence contention of the petitioner that he was issuing the tickets when the bus was checked cannot be accepted. The students on spot have disclosed together that they have given fare amount at the time of boarding of bus itself and the petitioner has also accepted that he has received the fare amount. He states that the amount was recovered from the students by guide and guide thereafter handed over amount to him and he was busy in preparing the tickets for issuance. I find that

considering the total number of passengers in the bus and their break up as mentioned above, this defence has not been rightly accepted by the Enquiry Officer and Court below. Recording of statement of students in the departmental enquiry is by way of after thought.

No case is made out for interference in writ petition. Writ Petition is dismissed. No order as to costs.

JUDGE

*GS.